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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of the Telecommunications
Act of 1996

Telecommunications Carriers' Use of
Customer Proprietary Network Information
and other Customer Information

CC Docket No. 96-115

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COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary

In balancing competitive and privacy concerns when establishing customer proprietary network information ("CPNI") rules, the Commission should not lose sight of the expectations and desires of the public. As the Commission has repeatedly found, consumers crave one-stop shopping. They want the option of ordering all of a company's products and services quickly and easily, without the need to sign release forms or talk to numerous sales personnel.

The new statute permits a telecommunications carrier to use CPNI in connection with the service from which the CPNI was derived and services "necessary to, or used in" the provision of that service. The Commission should define services for the limited purpose of its

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

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CPNI rules solely in terms of customers' expectations and desires, without regard to regulatory definitions that may be appropriate in dealing with other sections of the Act, but that have little meaning to end-users. The public views customer premises equipment ("CPE"), inside wiring, and some information services as just an optional type or part of the underlying local service. Therefore, while the Commission's CPNI proposal moves in the right direction by defining services for this limited purpose fairly broadly, it should be revised to acknowledge end-user customers' perception that CPE, inside wiring and certain information services are all parts of the same service. Then, under the statute, CPNI derived from any part of a local service, as broadly defined, may be used to sell any other part.

In adopting and re-examining its CPNI rules, the Commission has found that customers expect that an integrated firm will be able to offer one-stop shopping, and that the Commission's rules should be consistent with that expectation. Customers should be the ones to decide whether to obtain all products and services from a single source or multiple sources, and the CPNI rules adopted here should not skew that decision.

Customers should be able to authorize unlimited access to CPNI by a carrier's sales personnel either orally or in writing. Carriers should be able to document oral consent through computer or written entries or, with customer consent, by recording the conversation in which authorization is granted.

The CPNI rules should be applied, on a non-discriminatory basis, to all telecommunications providers. They should supplant the existing Computer Inquiry II and III rules that apply to only a limited number of carriers. Retaining disparate rules for different carriers will heighten customer confusion with no competitive or privacy benefits.

From a policy perspective, customers' expectations of receiving one-stop shopping from an integrated firm are enhanced when the customer has a prior business relationship with that firm, as Congress and the Commission have recognized in the telemarketing context and in the CPNI rules that apply to cable companies. Therefore, the Commission should find that a customer that has a prior business relationship with a carrier has approved allowing that carrier to use CPNI to market or sell a full range of its services. All customers should receive a one-time written notice, and continuing notification in telephone directories, that they have the right to deny access to CPNI by contacting the carrier.²

II. Service Definitions For CPNI Purposes Should Be
Based On Customer Perceptions, Not Regulatory Distinctions.

Section 222(c)(1) of the Communications Act, added by the Telecommunications Act of 1996, allows a carrier to use CPNI derived from a telecommunications service to provide only that service, or services necessary to, or used in, the provision of that service, except as required by law or with approval of the customer.³ The Commission proposes to define "services" for this purpose as local, interexchange, and commercial mobile radio services ("CMRS").⁴ It tentatively finds, however, that information services and CPE constitute separate "services" from underlying basic services for purposes of this section.⁵ End-user customers do

² Bell Atlantic is not addressing subscriber list information issues in these Comments but supports the Comments of the Yellow Pages Publishers Association on this issue.

³ 47 U.S.C. § 222(c)(1).

⁴ *Notice of Proposed Rulemaking*, FCC 96-221 at ¶ 22 (rel. May 17, 1996) ("Notice").

⁵ *Id.* at ¶ 26.

not perceive such regulatory distinctions as meaningful for marketing or procurement purposes. They want to have the option of obtaining a package of related products from a single vendor without navigating through authorization forms or regulatory distinctions. They generally view, for example, CPE used in conjunction with a local telephone service such as Caller ID and information services such as Answer Call as part of their local telephone service.⁶ Regulatory distinctions may well be important when the Commission is dealing with other sections of the statute, but they should not be used when adopting rules relating to marketing of services to end-users, for which customers' perceptions and expectations should control. As shown below, the Commission has repeatedly recognized the importance of gearing its rules to customers' desires for "one-stop shopping." It should do so again here by finding, for the limited purpose of implementing the CPNI statutory provisions, that CPE used in conjunction with a local service, certain information services, and inside wiring services are, in end-users' minds, so intertwined with the associated basic service as to constitute a part of their local service.

For example, as Bell Atlantic has previously told the Commission, "[c]ustomers view Answer Call in the same way as any other optional feature of their local telephone service and expect to obtain it in the same manner as other services."⁷ This customer perception is reflected in the fact that, by Bell Atlantic's estimates, the inability to market the services jointly,

⁶ The term "local" service is being used in these Comments in the same way as the Commission uses it in *id.* at ¶ 22.

⁷ Comments of Bell Atlantic, CC Docket No. 95-20, Att. B (Declaration of Robert N. Garner) at ¶4 (filed April 7, 1995).

through the business offices, will reduce total Answer Call demand by more than one million subscribers by the year 2000.⁸

Similarly, CPE that is used in conjunction with local service generally has no function except when used as part of the local service, and the local service generally have no value without the associated CPE. For example, Caller ID service is valueless without a Caller ID display unit. Bell Atlantic markets such units jointly with Caller ID service and has found that existing Caller ID customers appreciate the opportunity of being informed when new Caller ID CPE becomes available. The same is true with equipment used with ISDN and other residential and business services that require specialized CPE. High-speed data services, including SONET, need terminating equipment to operate. Likewise, as the Commission has found, wireless customer equipment is almost uniformly sold or leased on a bundled basis with CMRS service, and customers perceive such equipment and services to be part of an integrated package.⁹

Customers also generally perceive inside wiring services as an optional type of basic local service. Without inside wiring, telephone signals will never reach beyond the customer's rate demarcation point. Access to CPNI enables telephone company sales personnel to know what type of wiring and wire maintenance plan¹⁰ a customer may need and to market those services to the customer along with basic local services on an optional, unbundled basis.

⁸ *Id.* at ¶ 5.

⁹ ***Bundling of Cellular Customer Premises Equipment and Cellular Service***, 7 FCC Rcd 4028, 4032, ¶¶ 29-30 (1992).

¹⁰ On the consumer side, such plans include Bell Atlantic's Guardian Service, which provides not just maintenance of the wiring but a loaner telephone should the customer's CPE become inoperable.

Of course, customers may obtain these unregulated information services, CPE and inside wiring from any source they want. As the Commission has repeatedly found, however, a great many customers want the convenience of one-stop shopping, without the need to sign authorization forms or deal with a succession of sales personnel. In developing the existing CPNI rules as competitive safeguards for integrated BOC provision of both information services and CPE, the Commission found that the record of the CPE relief proceeding “indicate[s] that a broad spectrum of communications users desire vendors that can be single sources for telecommunications products.”¹¹ Similarly, when re-establishing structural relief for enhanced services, the Commission acknowledged that “[t]he integrated marketing to consumers and smaller businesses made possible by the current CPNI rule not only allows the BOCs to provide basic and enhanced services more efficiently, but also provides direct benefits to customers in the form of ‘one-stop shopping.’”¹² More recently, the Commission confirmed that access to CPNI “is closely analogous to joint marketing under certain safeguards, which necessarily involves sharing of some customer network information.”¹³

Independent studies confirm these Commission findings. For example, in a nationwide small business survey conducted in 1994 by NFIB Foundation, 85.9% of respondents

¹¹ ***Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order***, 2 FCC Rcd 143, 147-48, ¶ 29 (1987) (“CPE Relief Order”).

¹² ***Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier I Local Exchange Company Safeguards***, 6 FCC Rcd 7571, 7610, ¶ 85 (1991) (“Computer III Remand Order”).

¹³ ***BankAmerica Corporation v. AT&T***, 8 FCC Rcd 8782, 8787, ¶ 27 (1993).

stated that they preferred to deal with one telephone company¹⁴ for all of their company's services and products.¹⁵ A 1996 IDC/LINK consumer survey produced similar results, finding that one of the most important customer considerations in the coming years will be the "ability for a telecommunications services provider to package various services and support all of a consumer's telecommunications needs. This is also referred to as 'one-stop shopping'".¹⁶

There is nothing in Section 222 that requires the Commission to turn its back on the public's desires and expectations to have one-stop shopping available. It need only slightly broaden the definition of the local category of "service" for purposes of promulgating rules to implement the CPNI provisions of Section 222 to include CPE, inside wiring, and information services that customers perceive as a type or part of their local service.¹⁷

III. A Prior Business Relationship Should Be Considered Tacit Approval, and Oral Consent Should Be Sufficient to Allow an Integrated Firm to Use CPNI.

The statute specifies written consent for disclosure of CPNI to a third party¹⁸ and oral consent to allow a carrier to access CPNI relating to one service for use to market another

¹⁴ This could be an incumbent local exchange carrier, a new entrant, or an interexchange carrier.

¹⁵ NFIB Foundation, "Who Will Connect Small Businesses to the Information Superhighway?" at 22 (Dec. 1994).

¹⁶ IDC/LINK, Telecommunications Brand Equity Study at 1 (1996).

¹⁷ A similar analysis applies to the interexchange and CMRS service categories and associated CPE, information services, and inside wiring.

¹⁸ 47 U.S.C. § 222(c)(2).

service during an inbound telemarketing call.¹⁹ The statute is silent, however, on how approval may be given for a company that already provides a service to a customer to use CPNI to market other services to that customer.

In connection with an earlier privacy statute, however, Congress and the Commission determined, as a policy matter, that a customer expects that a company with which he or she has a prior business relationship, along with that company's affiliates and subsidiaries, will market all of its products and services to that customer, and that such marketing does not violate the customer's privacy expectations.²⁰ The requirements governing the use of CPNI by cable companies have historically reflected this same policy determination.²¹ Similarly, the Commission has found on numerous occasions that competition will not be harmed if Bell operating company enhanced service and CPE marketing personnel have access to CPNI, unless the customer has affirmatively restricted such access.²² As a result, existing Commission policy is that, from both a competitive and a privacy perspective, CPNI should be available to all of a carrier's marketing personnel, unless the customer chooses to restrict such access. The Commission should adopt a similar policy here by deciding that the existence of a prior business

¹⁹ 47 U.S.C. § 222(d)(3).

²⁰ 47 U.S.C. § 227(a)(3)(B); ***Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991***, 7 FCC Rcd 8752, 8770, ¶ 34 (1992).

²¹ *See* 47 U.S.C. § 551.

²² *See e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase I Report and Order*, 104 F.C.C.2d 958 at ¶¶ 264-65 (1986); CPE Relief Order at 153, ¶ 70; Computer III Remand Order at 7609-14, ¶¶ 84-89. Business customers with more than 20 lines must give prior consent before the BOCs' enhanced service marketing personnel may access their CPNI. Computer III Remand Order at 7611, ¶ 86.

relationship constitutes approval for the carrier and its affiliates to access CPNI, unless the customer notifies the carrier otherwise.

Where prior approval is needed to access CPNI, however, the Commission should allow the carrier to obtain such approval either orally or in writing. If the carrier chooses to obtain oral approval, the Commission should accept as evidence of such approval a notation in a computer database, a written notation, or a recording (made with the customer's prior consent) of the conversation in which approval is given.

IV. The Same CPNI Requirements Should Apply To All Service Providers;
Therefore, Existing Computer Inquiry II and III Provisions Should Be Repealed.

Section 222, on its face, applies to every telecommunications provider, with no differentiation based on a provider's "dominant" and "non-dominant" status under Commission rules. So should the Commission's rules implementing that section. With all markets open to competition and competitive entry growing rapidly, there is no justification for applying different competitive policies to the BOC and to their competitors. Similarly, customers' privacy expectations do not vary based on the Commission's dominant/non-dominant designation. Customers have the same desire to obtain one-stop shopping, whether from AT&T, MCI, Time Warner, or Bell Atlantic, without the need to give prior approval or receive annoying annual mailings. Therefore, there is no justification for the Commission to apply different rules to different carriers.

Consistent with this approach, the Commission should eliminate the separate set of Computer Inquiry II and III CPNI provisions relating to enhanced services and CPE that apply

only to the BOCs, GTE and AT&T. Where the rules adopted here are consistent with the existing provisions, separate regulations are redundant. Where the rules differ, having separate regulations will cause confusion and inconvenience, increase costs, and create competitive inequality -- all with no public benefit. Therefore, the Commission should eliminate the non-structural CPNI requirements once the rules adopted here become effective.

V. Limited Preemption Should Be Retained.

The Commission asks whether it should preempt the states from imposing additional CPNI requirements.²³ The Commission has previously found that state CPNI rules that are more stringent than the federal rules would interfere with a federal policy, and preempted the states from adopting such rules.²⁴ Nothing in the 1996 Act should cause the Commission to change this limited degree of preemption.

VI. The Commission Should Require One-Time Notification To All Customers and Directory Publication of CPNI Rights.

The existing requirements for annual notification of multi-line business customers should be revised. Having received and reviewed CPNI notifications in previous years, many customers are annoyed at having to receive additional mailings each year. Few customers change their prior instructions from year-to-year. On the other hand, single-line business and

²³ Notice at ¶¶ 17-18.

²⁴ Computer III Remand Order at 7636, ¶ 130. The Court of Appeals affirmed the Commission's limited preemption of state CPNI regulation. *California v. FCC*, 39 F.3d 919, 933 (9th Cir. 1994), *cert denied*, 115 S. Ct. 1427 (1995).

residential customers are currently not directly informed of the CPNI rights and may not be aware of their right to restrict access to their records. Bell Atlantic suggests that the Commission require a one-time written notification by all carriers to all customers, both business and residence, of their CPNI rights. After this initial notification, new customers would receive a one-time CPNI notification when they subscribe to service. In addition, carriers that print telephone directories should print a summary of customers' CPNI rights in the consumer information section of the white pages directories to provide customers with additional notification of their CPNI rights.²⁵

²⁵ The directory information should tell customers that similar provisions are in effect for other local and interexchange carriers and invite them to call their carriers for additional information. The Commission should not, however, require directory publishers to print separate CPNI information for each carrier.

VII. Conclusion

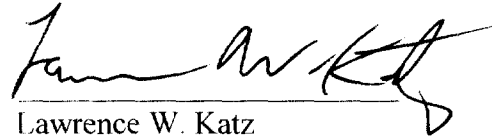
Accordingly, the Commission should adopt its proposed CPNI rules, but with the modifications discussed herein.

Respectfully Submitted,

**The Bell Atlantic Telephone
Companies**

By their Attorney

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A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz

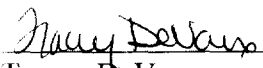
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 1996 a copy of the foregoing "Comments of Bell Atlantic" was served on the parties on the attached list.


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